No. 7

IN THE

Supreme Court of the United States

October Term, ~~1950~~ 51

No. ~~532~~ 7

DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, INC.,
Petitioner,

v.

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON, G. STEBBINS and F. WALSH,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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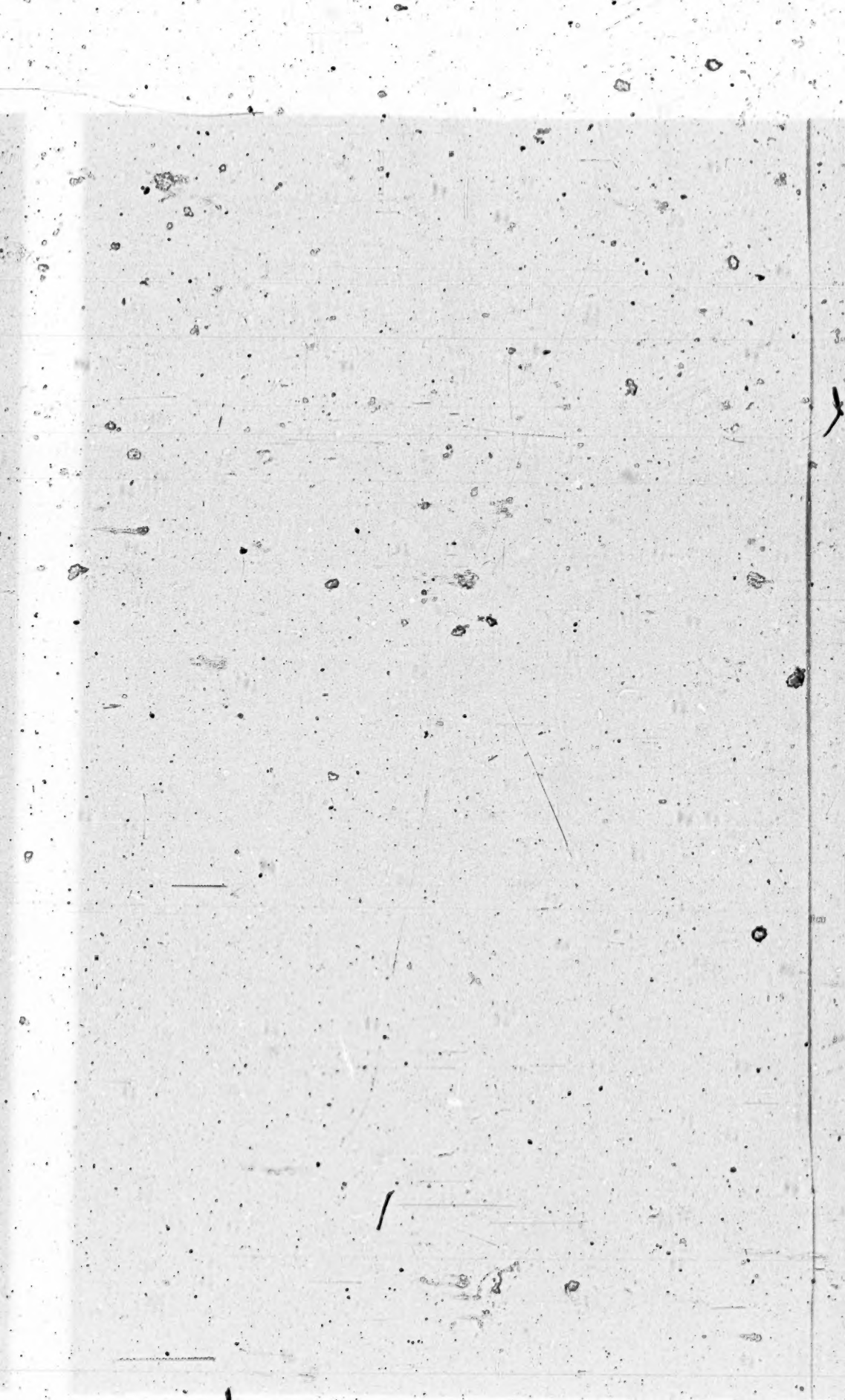

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Dairymen's League Co-operative Association, Inc., Intervening Defendant in the above entitled action, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on November 9, 1950. Petitioner joins in the Petition for Writ of Certiorari filed herein by the Solicitor General on behalf of the Secretary of Agriculture.

OPINIONS BELOW

The opinion of the District Court is reported in 82 F. Supp. 614. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R.) is not reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on November 9, 1950 (R.). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

1. Whether the Agricultural Marketing Agreement Act of 1937 confers upon the Secretary of Agriculture latitude to provide in the Boston milk order for the payment, out of the producer-settlement fund, to co-operative associations of producers for the performance of market-wide services found by the Secretary to be necessary commencing with 1941 in order to make effective the classification, pricing, and pooling provisions of the milk order.

2. Whether the delegation of power to the Secretary of Agriculture in the Agricultural Marketing Agreement Act of 1937 to issue a milk order is so limited that the provisions included in the Boston order, on the basis of evidence adduced at public hearings, found by the Secretary to be incidental to, not inconsistent with the other provisions of the order and necessary to effectuate the other provisions of the order are as a matter of law not incidental to, are inconsistent with and are not necessary to effectuate the other provisions of the order or to effectuate the declared policy of the act even though conceded by the court below to be beneficial, help-

ful and pronounced aids to all participants in the program since 1941 and that the findings of the Secretary were based upon substantial evidence.

3. Whether a class action can be maintained where the nominal plaintiffs have different interests from many of the producers involved and some of them have ceased as producers under the order; also whether a Court of Equity will consider an action largely, if not wholly, financed, instigated and controlled by handlers who have vigorously opposed the institution of the order and who, under *Stark* v. *Wickard*, 321 U. S. 288, cannot themselves raise the questions here involved.

4. Whether the scope of judicial review under the Act permits the trial court to ignore relevant findings by the Administrator in 1944 which findings were ratified by the Secretary.

5. Whether the payments to cooperatives are as a matter of law payments to the producer members as held below.

6. Whether the payments to cooperatives, which are vital to their continued existence, are not required by Sec. 10(b)(1) of the Act.

STATUTE AND ORDER INVOLVED

Pertinent provisions of the Statute and Order are contained in the Government's petition herein as Appendix A and Appendix B.

STATEMENT.

This action was instituted in 1941 as an alleged class action by five dairy farmers, financed by proprietary handlers, to enjoin the Secretary of Agriculture from making certain payments to co-operative associations of producers pursuant to the Boston milk order. The com-

plaint alleges (R. . . .) that there is no statutory authorization for the provisions in the Boston milk order providing for payments to the producers' co-operative associations who perform services for the market as a whole and that such provisions in the order are, therefore, "without legal authority, and are unlawful and void."

These market-wide services in brief are: (a) legislative activities consisting principally of continuous market analysis and the preparation and proof of the necessity for provisions of orders and amendments to bring about orderly marketing for the benefit of all producers, and opposition to adverse propositions; (b) educational activities consisting of keeping all producers thoroughly informed of the operation of such programs so as to obtain and maintain their support thereof; and (c) handling activities consisting of maintaining a full supply of milk to take care of market needs at all times, coupled with providing a dependable outlet for producers' seasonal or other surplus.

The suit was originally dismissed by the District Court on the ground that the Act vested no legal cause of action in milk producers, as contra-distinguished from milk handlers who are regulated by the order, and its judgment was affirmed by the United States Court of Appeals for the District of Columbia. *Stark* v. *Wickard*, 136 F. 2d 786. That decision, however, was reversed in *Stark* v. *Wickard*, 321 U. S. 288, by the holding that the dairy farmers "have legal standing to object to illegal provisions of the Order," and the District Court was directed, in the remanding of the case, to consider "the soundness of the allegations made by the petitioners in their complaint" and "whether the statutory authority given the Secretary is a valid answer to the petitioners' contention." The only question resolved by *Stark* v. *Wickard*, 321 U. S. 288, was that the dairy farmers who instituted this action had such a legal interest in the producer-settlement fund as entitled them to challenge

the action of the Secretary in directing the disbursements from such fund to co-operative associations of producers for the performance of market-wide services. In reversing and remanding the case, the Court merely held (321 U. S. at 311) that the petitioners had shown a right to a judicial examination of their complaint. The question of statutory authority for the payments was left to the trial court.

The respondents asserted below that the only issue is one of "statutory power to make the deduction required by Order, § 904.9, under the authority of § 8c(7)(B) of the Act." *Stark* v. *Wickard*, 321 U. S. 288, 307. However, the provisions to be included in a milk order are outlined in §§ 8c(5) and 8c(7) of the Act. In addition to the provisions authorized by § 8c(5) of the statute, it is provided in § 8c(7)(D) of the Act that other provisions "incidental . . . and necessary" may be included, if the auxiliary provisions in the order are not repugnant to § 8c(5). There is also a provision for recognition of services of a co-operative in § 10(b)(1) of the earlier act retained by the 1937 amendments. The District Court held, in the reconsideration of the case on its being remanded by the Supreme Court, that the statute does not delegate authority to the Secreary to include in a milk order provisions for payments for market-wide services rendered by the co-operative associations of producers, and the District Court enjoined the Secretary from making further payments under the Boston milk order. *Stark* v. *Brannan*, 82 F. Supp. 614. The effectiveness of the judgment was stayed by the District Court on condition that all such payments be held in escrow pending the final disposition of the case on appeal (R. 156), and the co-operatives who qualify for payments are continuing to perform the services. The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia Circuit, with Judge Edgerton dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that there is no statutory basis for the provisions in the Boston milk order providing for the payment, out of the producer-settlement fund, to the co-operatives for the performance of services found by the Secretary to be necessary in order to make effective the classification, pricing, and pooling provisions in the order and of benefit to all producers, both members and non-members.

2. In holding that as a matter of law the provisions in the milk order for payments to co-operative associations for the performance of market-wide services were "inconsistent" with the statutory provisions in § 8c(5) for uniform price of milk, were not "necessary" to effectuate the other provisions of the order or policy of the Act and were not incidental to the classification, pricing and pooling provisions in the order.

3. In holding that the delegation of power to the Secretary of Agriculture to issue a milk order is so limited that provisions included by the Secretary on the basis of evidence at public hearings and upon findings by him to be "necessary" to effectuate the other provisions of the order and the declared policy of the Act, such provisions being conceded by the reviewing court to be beneficial, helpful and pronounced aids to all participants in the program since 1941, and that the findings were based upon substantial evidence are, nevertheless, as a matter of law, not "necessary."

4. In basing its decision as to inconsistency of the provisions for co-operative payments with those of § 8c(5) upon its construction of the provisions of Section 904.9 of the 1941 Boston Order, as requiring payments

to producer members of the co-operative associations instead of directly to such associations as specifically provided by the terms of the order and so interpreted in *Stark* v. *Wickard*, 321 U. S. 288, 301, 305.

5. In apparently overlooking important findings in 1944 by the then Administrator of the Act which findings were later ratified by the Secretary.

6. In not holding that the payments are vital to the co-operatives and therefore mandatory under § 10(b)(1) of the Act.

REASONS FOR GRANTING THE WRIT

1. The questions here raised are of vital importance to intervenor because it is a co-operative association which has received payments under somewhat similar provisions in New York Order No. 27 (§ 929.(f).) issued by the Secretary and several million dollars have been paid to co-operative associations under such order. Somewhat similar provisions are contained in orders for the Cincinnati marketing area and the Dayton-Springfield marketing area. Approximately $14,000,000 have been paid since 1938 to co-operative associations under these various orders. It is, therefore, vitally important not only to intervenor but also to the various other co-operative associations that the questions here involved be reviewed by this Court.

2. The decision of the Court of Appeals is in conflict with the decisions of other Circuits in construing delegation of power under the same act and relevant delegations under other acts.

Green Valley Creamery v. *United States*, 108 F. 2d 342 (C. A. 1) sustained price differentials to co-operatives and also elimination of certain milk from the pool.

There was no express provision in the act authorizing such elimination.

Bailey Farm Dairy Co. v. *Anderson*, 157 F. 2d 87 (C. A. 8) (Cert. Den. 329 U. S. 788) upheld a quota plan of pricing and classification of outside milk without specific authority in the Act.

Grandview Dairy v. *Jones*, 157 F. 2d 5, 6 (C. A. 2) (Cert. Den. 329 U. S. 787) upheld payments for diversions of milk from shipping plants to manufacturing plants under Section 8c(7)(D) the "incidental and necessary" provision of the Act.

Warehime v. *Varney*, 54 F. Supp. 907 (D. C. N. D. Ohio, E. D.) (147 F. 2d 238 (C. A. 6) Cert. den. 325 U. S. 882), involved the regulations to effectuate the policies of the Second War Powers Act of 1942. No authority was given to charge the expenses of enforcement to handlers but it was held that such power was involved in the necessity of filling out the details of Congressional action to enforce the policies of the act.

The decision of the Court of Appeals limits and whittles down the authority of Congress to delegate to an administrative agency the power to make regulations auxiliary to an act to effectuate its purposes and, therefore, is contrary to decisions of this Court.[1]

The Court below overruled the findings of the Secretary based upon concededly substantial evidence and substituted its own judgment as to the "necessity" of the co-operative provisions. This was erroneous.[2]

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[1] *United States* v. *Rock Royal Coop.*, 307 U. S. 533, 574; *Yakus* v. *United States*, 321 U. S. 414, 427; *Lichter* v. *United States*, 334 U. S. 742, 785; *Gemsco* v. *Walling*, 324 U. S. 244, 257, 267; *United States* v. *Ruzicka*, 329 U. S. 287, 295; *American Power & Light Co.* v. *Securities & Exch. Com'n.*, 329 U. S. 90, 112.

[2] *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 513; *Securities and Exchange Com'n.* v. *Chenery Corp.*, 332 U. S. 194, 208-9.

3. The strict construction of the provisions of the Marketing Act by the Court of Appeals apparently relying upon the decision in *Schechter Poultry Corp. v. United States*, 295 U. S. 495, was erroneous.

The Court placed reliance upon the intent of Congress to limit its delegation of power, as set forth in the Schechter case, and doubtless the Court had in mind the reports of the Congressional Committees on the 1935 amendments to the Agricultural Adjustment Act, which so indicated.[2]

However, these reports show that the committees interpreted the *Schechter* decision as imposing three obligations as to regulations, viz.: (a) they must affect interstate commerce, (b) they cannot be imposed by agreement of members of the industry itself, and (c) that in order to prevent unfettered discretion on the part of the Secretary, it was necessary that orders be issued only after a hearing and a determination of the Secretary upon findings. The above three pre-requisites constituted the basis of the Schechter opinion. The 1935 amendments observed these requirements in Sec. 8c(1), (3) (4) (5) (7) and Sec. 10(b)(1).

This Court indicated in the *Schechter* case in its references to delegations of powers to the Tariff Commission and to the Interstate Commerce Commission that delegation of power was proper where regulations were based upon substantial evidence at hearings and findings. The clear intent of Congress as shown by the Committee Reports was that the Secretary should have power in framing his orders to insert provisions found necessary to effectuate the purposes of the act if based upon substantial evidence therefor and findings. Thus

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[2] H. R. 1241, 74th Cong., 1st Sess., pp. 3 and 4; S. 1011, 74th Cong., 1st Sess., p. 6.

it would seem that the narrow construction by the Court below limiting the authority of the Secretary to specific provisions in the act was not justified either by the intent of Congress or by the *Schechter* decision. Moreover that decision has been modified by later decisions[4] to the extent that it is sufficient if there be some standards for guidance. Hence flexibility and practicality can validly be considered.

The power of the Secretary to determine details of a legislative scheme and add auxiliary provisions has been upheld by this Court in *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 574-5, and the Court there upheld the right of the Secretary to determine what milk should be priced and what left unpriced in an order.

Likewise the Court of Appeals of the Second Circuit has held that wide discretion should be given to the Secretary in adopting methods to achieve the goals of the statute.[5]

The narrow construction as to delegation of power by the Court of Appeals in this case if not modified will hamper and cripple the Secretary in issuance of orders. Other provisions of existing orders than those held illegal here may well come within the invalidation of provisions not expressly authorized by § 8c(5). One of these is the deduction made under orders for a reserve fund from producers one month for later accounting to producers whose personnel has changed. However, such a reserve fund is absolutely necessary to the operation of any order. Another provision rendered questionable by

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[4] *Yakus* v. *United States*, 321 U. S. 414, 424-427; also dissenting opinion of Justice Roberts at page 452; *Rowles* v. *Willingham*, 321 U. S. 503; *Alaska Steamship Co.* v. *Mulaney*, 180 F. 2d 805, 821-22 (C. A. 9).

[5] *Queensboro Farm Products* v. *Wickard*, 137 F. 2d 969, 977, 980.

the narrow construction below is the provision in the Louisville order and other orders for deduction from producers during the summer months to pay producers for production during winter months and, of course, there may well be a change in the personnel of the producers in the intervening months. These are simply examples of provisions which likewise are of real value and the Secretary may be prevented from using similar discretion as to necessary provisions to effectuate the purposes of the act in the future unless the decision here is reviewed.

The orders involve complicated economic conditions which the act requires to be considered. These vary in different markets. The surplus problem must be considered and an adequate market supply insured (§ 8c(18) of Act). Wide discretion to add ancillary provisions must be given or orders will fail in their purpose.

4. The Court based its holding as to the co-operative payment provision being "inconsistent" with § 8c(5) of the Act upon the claim that there was lack of uniformity in payments to producers because the co-operative payments were made to their producers and they thus received more money than non-members. There is nothing in the present record to support the Court's holding that members received more money than non-members. Not even a single penny of the payments remained after payment of the expenses of the co-operatives for transmission by the co-operatives to their producers. § 904.9 of the order specifically requires payment to the co-operatives. They are separate entities from their producers.[10] The reasoning of the Court was, therefore, erroneous.

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[10] *Maryland and Virginia Milk Producers* v. *District of Columbia*, 119 F. 2d 787, 792 (C. A. D. C.).

5. The Court also erroneously based its ruling as to lack of necessity of the payments on the ground that the co-operative had been able to operate without them before the orders were issued.

The testimony of the witnesses Swonger (R. 234, 239), Thompson (R. 183, 188) and others, and the deposition of Chester W. Smith (R. 68-73) shows that the co-operatives in the Boston area were under heavy expense in providing the services for which they asked payments. Some of the licenses issued under the old act, as in the case of St. Louis, Minneapolis and Chicago, provided for payments to co-operatives for services benefiting all producers, and these licenses were ratified and approved by Congress in § 4 of the 1937 Act; also prior to the 1941 amendment, the Boston Order provided for payments to co-operatives in connection with handling of Class II milk in amount greater than the resulting co-operative payments (R. 73-4, 89). Sect. 258-m of the New York Agriculture and Markets Law, as added by Chap. 383 of the Laws of 1937, and amended by Chap. 760, Laws of 1939 expressly authorized co-operative payments such as here considered.

6. The Court in considering the "services" rendered by the co-operatives, conceded they were helpful but ignored the finding in 1944 by the Acting Director of Food Distribution, who then administered the Act, in refusing to amend the order so as to eliminate the payments. The finding was made on March 18, 1944 and is set forth in 9FR 3059. It was as follows:

> "The present plan of payments to cooperatives, which became effective August 1, 1941, was based on the consideration that to achieve the benefits to all producers which the order is designed to provide two types of activity by producers' cooperative marketing organizations are desirable—(1) presentation of evidence at hearings concerning the needs of pro-

ducers with respect to prices for milk and differentials to reflect handling costs to furnish an adequate basis for constructive amendments to the order, and (2) assumption of responsibility for a reserve of milk to meet the irregular needs of distributors which is essential in a market which provides market-wide equalization among all producers of the total value of the milk. Further, it is recognized that allowances for costs associated with providing services to the market should be separated from the allowance which reflects the additional cost of receiving milk at country plants compared to receiving it directly at city plants. From these considerations it was concluded that provision for payments to cooperative associations is considered necessary to quitably apportion the total value of milk among producers. The testimony in support of the proposal to completely eliminate this feature of the order does not show that these considerations were substantially erroneous."

This was a preliminary finding which was affirmed and adopted in the final report dated April 22, 1944 (Appendix A, present brief). This finding implements the requirements of the order, especially the clause as to "the operation of a plan of uniform pricing of milk to handlers," by stating the nature of the services which had been recognized by the Secretary as the basis for the payments, and the testimony of witness George Thompson (R. 173, et seq.) and witness W. P. Davis (R. 213, 221) gave a basis for the finding.

The finding is also compatible with the provisions as to such recognition of co-operatives "as will tend to promote efficient methods of marketing and distribution." Thus the payments were to be made as an aid to equalization, because the provisions of § 8c(5) of the Act furnished no machinery for handling of surplus or for securing additional supplies of milk in times of shortage.

The services of the co-operative in initiating orders, furnishing the necessary evidence as to the requirements of an order and securing support thereof in referendum through widespread explanations to producers, including non-members, are far more than helpful. They are vital. An order cannot well be adopted except by such activities. Few independent producers attend hearings or vote (see affidavit of R. D. Aplin, R. 90-91). The information furnished by handlers is usually in support of reduction of prices requested by producers. They are opposing forces.

The inertia of independent producers and necessity of harnessing the energies of co-operatives for the benefit of all producers is well described by Judge Cardozo in *People* v. *Teuscher*, 248 N. Y. 454, 462, 463. The co-operatives not only bulk large in adoption of orders and amendments thereof, but in support thereof in their contacts with handlers.

Producers will continue to trust an order only so long as their own representatives participate actively in moulding the policy thereof "with the solicitude of ownership" (*People* v. *Teuscher*, supra) and keep them well informed. "Better than mere officials, they would know what should be done" (Id.) Many of the independent producers fully appreciate the benefits of their "free ride." (See evidence of witness Carten, R. p. 240).

7. Co-operative payments are authorized by the Act not only under § 8c(7)(D) but also in order to effectuate the provisions of § 8c(18) and § 10(b)(1) of the 1935 Act and to implement the equalization under § 8c(5). The legislative history and other grounds support this.

The Congressional Committee Reports stated that the provisions in § 8c(5) were an adoption of the practices of co-operative associations. These practices were the use of the classified price plan as to pricing and the

equalization of prices to producers through blending so that there would be uniformity as to them regardless of the use of milk by the handlers. Therefore, the provisions of § 8c(5) were intended to require these basic principles and the use of the word "only" was to limit these basic principles. The use of additional provisions not inconsistent with these two general principles but to fill out the gaps and make the principles workable should not be considered as forbidden by the provisions of § 8c(5).

8. Before the issuance of an order conditions in a market must be disorderly. Otherwise, the order cannot be issued (Declaration of Policy and §2(1) of the Act).

The principal symptom of such disorder is wide variation in producer prices due to varying amounts of surplus of individual handlers, with the co-operatives generally on the high surplus and low price side (*Nebbia* v. *New York*, 291 U. S. 502, 518).

This naturally endangers the existence of the co-operatives as their members will refuse indefinitely to continue to stabilize the market at their own expense for the benefit of non-member neighbors.

Therefore the co-operatives seek and obtain orders.

The orders level the price to all producers, but clear the equalization through the co-operatives. However, the co-operatives will still have to pay their members less because of the deduction of the expenses of their handling services (surplus and shortage), legislative services (including hearing preparation and participation) and educational services (including, importantly, dissemination of information with regard to order operations to maintain producer confidence therein and support thereof).

Thus, the accomplishment of market stability by the co-operatives seeking the assistance of a government order, and thereby obtaining relief from their unfair surplus burden, sows the seeds of their own destruction by making their lower price, due to the deduction of continuing expenses, begin to stand out like a sore thumb against the leveled uniform blended price under the order. Before the order prices varied so widely that the small variation caused by these expenses was of very little importance.

These irresistible conclusions of arithmetic and logic from details of actual operations in the hearing record, make it mandatory on the Secretary under § 10(b)(1) further to refine the equalization process by a pool deduction for payments to co-operatives in reimbursement for expenses of general benefit and thereby equalize their producer price back up toward the uniform price. Thus the payments are not only legal but mandatory without more than cursory cross-reference to § 8c(7).

It is no answer that co-operatives existed before orders. They were sadly ailing because their overburden of surplus and expenses caused lower prices to their members; otherwise, they would not have asked the government to help with the order.

It is true that co-operatives in many order markets do not have any such payments. However, many of them are anxiously awaiting the result of this litigation before applying for this needed relief.

9. This suit should have been dismissed.

(a) It is not a class action. The plaintiffs do not represent non-member producers, a large percentage of those who voted did so in approval of the order (R. 91) and, therefore, plaintiffs do not represent them. Some of the plaintiffs have ceased being producers under

the Boston-Order (R. 255, 299, 352). Plaintiff Stratton is dead (R. 444). Therefore, under Rule 223a of the Rules of Civil Practice, a class action is not presented. Plaintiffs are not really members of the class for which they purport to act. (Rule 23a Rules of Civil Procedure; *Clark* v. *Chase National Bank*, 45 F. Supp. 820, 823; 3 Moores Fed. Prac. (2nd Ed.) p. 3419.

(b) The plaintiffs are not the real parties in interest here because the Hood Company and the Whiting Company handlers are not entitled to maintain an action of this kind (*Stark* v. *Wickard*, 321 U. S. 288, 308). They fought the original order (*H. P. Hood & Sons* v. *United States*, 307 U. S. 588) and instigated this action. The attorneys conducting it are those of the Hood Company (R. 433-447-8) and the expenses amounted to about $23,000.00 up to February 28, 1948 and have been paid by these companies and other handlers (R. 450). These and other pertinent facts as to the real party in interest are shown by the depositions in R. 254-440. Under these circumstances, equity should not consider this case. (*United States* v. *Johnson*, 319 U. S. 302).

CONCLUSION

It is respectfully submitted that the Court should grant the present Petition, and the Government's Petition filed herein, and the judgment below should be reversed.

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APPENDIX A

WAR FOOD ADMINISTRATION
OFFICE OF DISTRIBUTION

REVISED REPORT WITH RESPECT TO A PROPOSED MARKETING AGREEMENT, AS AMENDED, AND TO AN AMENDMENT TO ORDER NO. 4, AS AMENDED, REGULATING THE HANDLING OF MILK IN GREATER BOSTON, MASSACHUSETTS, MARKETING AREA.

Pursuant to § 900.13 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders, there is hereby filed the revised report of the Director of Distributions with respect to a proposed amended marketing agreement and a proposed amendment to the order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

*The present plan of payments to cooperatives, which became effective August 1, 1941, was based on the consideration that to achieve the benefits to all producers which the order is designed to provide—**

". . . numerous activities of producers' cooperative marketing organizations are desirable, such as presentation of evidence at hearings concerning the needs of producers with respect to prices for milk and differentials to reflect handling costs to furnish an adequate basis for constructive amendments to the order, study and research with respect to marketing problems common to all pro-

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* Underscored portion is from "Notice of Report And Opportunity to File Written Exceptions with Respect to A . . . Proposed amendment To The Order as Amended Regulating The Handling of Milk In The Greater Boston, Mass. Marketing Area, filed March 18, 1944 and signed by C. W. Kitchen, Acting Director of Food Distribution (Federal Register, Vol. 9, No. 57 pages 3057-3060, March 21, 1944). The revised report affirms and adopts this part of the preliminary report.

ducers, educational activities designed to give producers a better understanding of the order, insurance to producers generally of a market for their milk, and assumption of responsibility for a reserve of milk to meet the irregular needs of distributors which is essential in a market which provides market-wide equalization among all producers of the total value of the milk".

*Further, it is recognized that allowances for costs associated with providing services to the market should be separated from the allowance WHICH REFLECTS THE additional cost of receiving milk at country plants compared to receiving it directly at city plants. From these considerations it was concluded that provision for payments to cooperative associations is considered necessary to equitably apportion the total value OF MILK AMONG PRODUCERS. The testimony in support of the proposal to Completely eliminate this feature of the order does not show that these considerations were substantially erroneous.**

This revised report filed at Washington, D. C. the 22nd day of April 1944.

/s/. C. W. Kitchen
Director of Distribution

* Id. p. 18.